IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.2485/07
Sohan Singh Jain Vs. Addl. Civil Judge
(JD) No.3 & Anr.

9.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Shailesh Prakash Sharma for petitioner.

Heard learned counsel for the petitioner.

The defendant petitioner has challenged the order dated 23.3.07 passed by the learned trial court whereby the trial court accepted the application of the plaintiff respondent under Order 26 Rule 1 & 2 permitting him to examine his witness Smt. Indrawati Chouhan on commission. In fact the application was made for examination of two witnesses to

commission namely Hotam Chand on the ground that he was old and was suffering from paralysis and Smt. Indrawati Chouhan on the ground that she was a patient of cancer. The learned trial court did not accept the request for examination of Hotam Chand because the medical certificate that was produced to substantiate the aforesaid ground did not corroborate the same, however, the learned trial court allowed the application for examination of Smt. Indrawati through commission as the medical certificate proved the fact that she was a patient of cancer.

Learned counsel for the petitioner argued that the parameters laid down in Order 26 Rule 1 & 2 were not made out and therefore the trial court

ought not to have allowed the examination. It was submitted that when it was controverted by the defendant on oath that Hotam Chand and Indrawati Chouhan were moving and doing day to day activities and there was affidavit of one Yogesh Sardana, which shows that Indrawati Chouhan was doing all her work self, examination of one of these two witnesses on commission was bad in law. It was submitted that the certificate dated 1.3.07 relied on by the defendant indicated certain medicines and did not show that Smt. Indrawati was unable to attend the Court proceedings. The learned trial court thus erroneously exercised the jurisdiction by permitting examination of Smt. Indrawati on commission.

Having heard the learned counsel for the petitioner and perused the material on record, I find that the learned trial court has passed the order after due application of mind. While the application was made for examination of two witnesses on commission, the trial court did not accede to the request with regard to Hotam Chand being examined on commission because the medical certificate produced regarding him did not prove the fact that he was suffering from paralysis and was unable to move at that time. The learned trial court held that the medical certificate of Smt. Indrawati shows that she was suffering from cancer. Her examination on commission cannot be said to have occasioned any miscarriage of justice in

as much as wrongful exercise of jurisdiction by the trial court. I therefore do not find any merit in the writ petition. The same is dismissed summarily.

(Mohammad Rafiq),J.

Rs/-